

1 totals 53 pages.

2 JUDGE GONZALEZ: I'm sorry. How many pages was
3 that?

4 MR. EMMONS: Fifty-three, Your Honor.

5 JUDGE GONZALEZ: And that's D?

6 MR. EMMONS: Yes, sir.

7 JUDGE GONZALEZ: Right. Okay.

8 MR. EMMONS: Tab E is a compilation of documents, of
9 various documents, historical documents totalling in the
10 aggregate 25 pages numbered 1 through 25.

11 JUDGE GONZALEZ: All right.

12 MR. EMMONS: Tab F is likewise a compilation of
13 historical documents, and the exhibit totals 28 pages.

14 JUDGE GONZALEZ: Okay.

15 MR. EMMONS: Tab G is the Motion for Summary
16 Decision filed by LaStar on August 15, 1990, with attachments,
17 and all together it totals 148 pages.

18 JUDGE GONZALEZ: I'm sorry. G's in another volume,
19 is that right?

20 MR. EMMONS: Yes. That G is the beginning of Volume
21 1-B, Your Honor.

22 JUDGE GONZALEZ: Oh, here it is. I see. All right.
23 Sorry. If you'll do that again, pleas?

24 MR. EMMONS: Yes, sir. Sure. Tab G is the Motion
25 for Summary Decision filed by LaStar on August 15, 1990, with

1 all of its attachments, and the exhibit totals 148 pages.

2 JUDGE GONZALEZ: Right.

3 MR. EMMONS: Tab H is a -- the first three pages
4 area a summary chart of telephone calls, and the remaining
5 pages 4 through 18 are the actual telephone records on which
6 the chart is based, these being telephone records of the
7 Office of Arthur Belendiuk.

8 JUDGE GONZALEZ: Okay. Fine.

9 MR. EMMONS: Tab I are various letters and other
10 communications of various dates. In the aggregate, the
11 exhibit totals 31 pages.

12 JUDGE GONZALEZ: Right.

13 MR. EMMONS: Tab J, the first page, is a calculation
14 of billing information in chart form, followed in the
15 remaining pages 2 through 15 of billing invoices. So, the
16 total exhibit totals 15 pages.

17 JUDGE GONZALEZ: Okay.

18 MR. EMMONS: Tab K are computer time records or
19 billing records and the exhibit totals 32 pages.

20 JUDGE GONZALEZ: All right.

21 MR. EMMONS: Tab L is a compilation of written
22 communications, various dates, and the exhibit totals 21
23 pages.

24 JUDGE GONZALEZ: Okay.

25 MR. EMMONS: And Tab M is likewise a compilation of

1 | communications of various dates, and this exhibit totals 11
2 | pages.

3 | JUDGE GONZALEZ: All right.

4 | MR. EMMONS: And that completes all the attachments
5 | to Exhibit 1.

6 | JUDGE GONZALEZ: All right. The exhibit along with
7 | the attachments is received.

8 | (Whereupon, the document marked for
9 | identification as TDS/USCC Exhibit
10 | No. 1 was received into evidence.)

11 | JUDGE GONZALEZ: Okay.

12 | MR. EMMONS: Your Honor, I just, glancing at the
13 | clock, noticed it's five minutes to twelve. Whatever your
14 | preference is on lunch?

15 | JUDGE GONZALEZ: It doesn't matter to me. Whatever
16 | you -- it's going to take awhile longer, right? I gather?

17 | (Laughter.)

18 | MR. EMMONS: All right. We'll proceed --

19 | JUDGE GONZALEZ: All right. Well, then we can break
20 | for lunch if everybody wants to. I don't mind going a little
21 | longer, if people prefer, but --

22 | MR. EMMONS: I'm happy to go longer, Your Honor.

23 | JUDGE GONZALEZ: All right. Does anyone have any
24 | big objection?

25 | UNIDENTIFIED SPEAKER: No, Your Honor.

1 JUDGE GONZALEZ: I think we're a little fresher in
2 the morning anyways, so we'll just prolong the morning. All
3 right. If you'll continue, Mr. Emmons?

4 MR. EMMONS: Next I'd like to have identified, Your
5 Honor, TDS/USCC Exhibit 2, which is the written Direct
6 Testimony of H. Donald Nelson. The testimony totals 40 pages.
7 There is a covering affidavit signed by Mr. Nelson and there
8 are a total of 26 tabs, A through Z. Should I identify the
9 tabs now, Your Honor, run this in as well?

10 JUDGE GONZALEZ: All right.

11 MR. SCHNEIDER: Alternatively, Your Honor, we do
12 have a -- an index that we could submit that will be part of
13 the record.

14 JUDGE GONZALEZ: Volume 11-A. I'm looking at the
15 wrong volume, I think.

16 MR. EMMONS: It would be Volume 2-A, Your Honor, and
17 also 2-B.

18 JUDGE GONZALEZ: Yeah. Right. Got you now. All
19 right. 2-A and 2-B.

20 MR. EMMONS: Yes, sir.

21 JUDGE GONZALEZ: And it -- the statement, again, is
22 how long?

23 MR. EMMONS: The statement is 40 pages long plus a
24 covering declaration signed by Mr. Nelson.

25 JUDGE GONZALEZ: All right.

1 MR. EMMONS: And there are 26 exhibits or
2 attachments A --

3 JUDGE GONZALEZ: Attachments.

4 MR. EMMONS: -- A through Z, as in zebra.

5 JUDGE GONZALEZ: All right. All right. I've got
6 it. All right. It's identified.

7 (Whereupon, the document referred to
8 as TDS/USCC Exhibit No. 2 was marked
9 for identification.)

10 MR. EMMONS: Your Honor, would you like me to
11 identify the attachments now or --

12 JUDGE GONZALEZ: Well, we can do that.

13 MR. EMMONS: I think I can do it fairly quickly like
14 we did before.

15 JUDGE GONZALEZ: All right. We'll begin with A
16 then.

17 MR. EMMONS: Attachment A is a compilation of
18 written materials totalling 10 pages.

19 JUDGE GONZALEZ: All right.

20 MR. EMMONS: Attachment B are two letters, each of
21 one page, so this exhibit totals two pages.

22 JUDGE GONZALEZ: All right.

23 MR. EMMONS: Attachment C are billing invoices of
24 the firm of Arthur Belendiuk and/or Smithwick (phonetic sp.)
25 and Belendiuk, and the exhibit totals 16 pages.

1 JUDGE GONZALEZ: All right.

2 MR. EMMONS: Tab D are a series of letters and
3 communications of various dates, and the exhibit totals 24
4 pages.

5 JUDGE GONZALEZ: All right.

6 MR. EMMONS: Tab E is a series of additional
7 invoices of Arthur Belendiuk or Smithwick and Belendiuk, and
8 this exhibit totals 16 pages.

9 JUDGE GONZALEZ: All right.

10 MR. EMMONS: Tab F is a series of documents relating
11 to Dr. Andy Anderson, and the exhibit totals eight pages.

12 JUDGE GONZALEZ: All right.

13 MR. EMMONS: Tab G is a handwritten memorandum
14 totalling two pages.

15 JUDGE GONZALEZ: Okay.

16 MR. EMMONS: Tab H is a letter and related documents
17 pertaining to cell site renewals, I believe, and the exhibit
18 totals six pages.

19 JUDGE GONZALEZ: All right.

20 MR. EMMONS: Tab I is the transcript of the Deposi-
21 tion of Mr. H. Donald Nelson taken in the LaStar proceeding in
22 July 1990. The exhibit totals 75 pages.

23 JUDGE GONZALEZ: All right.

24 MR. EMMONS: Tab J is a transcript of the oral
25 testimony of Mr. Nelson at the hearing in LaStar in January

1 1991, and this exhibit totals 148 pages.

2 JUDGE GONZALEZ: All right.

3 MR. EMMONS: We next -- we now move to Volume 2-B,
4 which starts with Tab K. Tab K is an exhibit of three pages
5 relating to tax returns.

6 JUDGE GONZALEZ: All right.

7 MR. EMMONS: Tab L is a draft of an affidavit and a
8 final version of the same affidavit, I believe, of Mr. Nelson,
9 and in the aggregate this exhibit totals five pages.

10 JUDGE GONZALEZ: All right.

11 MR. EMMONS: Tab M is a two-page exhibit which is
12 another affidavit of Mr. Nelson.

13 JUDGE GONZALEZ: All right.

14 MR. EMMONS: Tab N is correspondence totalling five
15 pages.

16 JUDGE GONZALEZ: All right.

17 MR. EMMONS: Tab O is also correspondence and
18 documents relating to Amendment of the Joint Venture
19 Agreement, and this exhibit totals 16 pages.

20 JUDGE GONZALEZ: All right.

21 MR. EMMONS: Tab T is correspondence relating to
22 payment of LaStar bills, and this totals four pages.

23 JUDGE GONZALEZ: All right.

24 MR. EMMONS: Tab Q is a covering letter on the first
25 page enclosing a draft of a declaration of Mr. Nelson, the

1 total -- that exhibit totals six pages.

2 JUDGE GONZALEZ: All right.

3 MR. EMMONS: Tab R is, on the first page, a letter
4 from Mr. Nelson, and the following page is the signed declara-
5 tion of Mr. Nelson dated August 13, 1990. The exhibit totals
6 six pages.

7 JUDGE GONZALEZ: All right.

8 MR. EMMONS: Tab S is correspondence totalling two
9 pages.

10 JUDGE GONZALEZ: I'm sorry. Did you --

11 MR. EMMONS: I was on Tab S, as in Sam.

12 JUDGE GONZALEZ: I'm sorry. I didn't say all right.

13 MR. EMMONS: I'm sorry.

14 JUDGE GONZALEZ: Okay.

15 MR. EMMONS: Okay.

16 JUDGE GONZALEZ: I'm sorry.

17 MR. EMMONS: Tab T --

18 JUDGE GONZALEZ: Right.

19 MR. EMMONS: -- is LaStar Hearing Exhibit 15, which
20 is the testimony of Mr. Nelson, and this exhibit totals eight
21 pages.

22 JUDGE GONZALEZ: Fine.

23 MR. EMMONS: Tab U is a copy of U.S. Cellular
24 Corporation Exhibit No. 1 in the LaStar proceeding, and this
25 totals 55 pages.

1 JUDGE GONZALEZ: All right.

2 MR. EMMONS: Tab V is, on the first page, a memoran-
3 dum from Cotina (phonetic sp.) Naftelan, and on the ensuing
4 pages a draft of what is known as the Petition to Delete
5 Footnote 3. The entire exhibit totals 70 pages.

6 JUDGE GONZALEZ: All right.

7 MR. EMMONS: Tab W is a covering memorandum
8 enclosing pleadings filed with the Commission by the Potosi
9 Company, that's P O T O S I. And I want to note, Your Honor,
10 that this exhibit is not being offered to prove the truth of
11 the, the matters asserted in, in the documents, but is offered
12 only for a limited purpose of being the predicate to which --
13 for statements made by Mr. Nelson and perhaps others to the
14 Commission explaining matters that are alluded to in the -- in
15 these documents.

16 JUDGE GONZALEZ: All right.

17 MR. EMMONS: Tab X is a two-page declaration of
18 Donald Nelson dated March 5, 1993.

19 JUDGE GONZALEZ: All right.

20 MR. EMMONS: Tab Y are a series of U.S. Cellular
21 Check Request Forms and supporting documents, and the exhibit
22 totals 30 pages.

23 JUDGE GONZALEZ: All right.

24 MR. EMMONS: And Tab Z is a one-page memorandum
25 dated February 19, 1988.

1 JUDGE GONZALEZ: All right. All those attachments
2 are identified A through Z.

3 MR. WEBER: I actually have a comment. Tab C and E
4 are identical. And I realize in the testimony it does refer
5 to actual tabs, so I guess I'm not actually asking E to be
6 stricken, but it should just be stated for the record that the
7 two tabs have identical documents.

8 MR. HARDMAN: I'm sorry. Which two tabs?

9 MR. WEBER: C and E.

10 MR. HARDMAN: C and E?

11 JUDGE GONZALEZ: Oh, in -- at different places in
12 the proposed exhibit it's referred to as C or E?

13 MR. WEBER: I believe so, Your Honor, yes.

14 JUDGE GONZALEZ: Well, then we --

15 MR. EMMONS: Your Honor, what we could do, if that's
16 the case, and I'm sure it is, and I haven't checked myself,
17 but we'll verify that and if that is the case then I think
18 maybe the most expedient thing to do would be to re-form the
19 particular reference in the witness's testimony to one or the
20 other of these so that the witness is referring only to one,
21 and then we would withdraw the other one. We can, we can do
22 that when the witness comes on the stand.

23 JUDGE GONZALEZ: Right. That probably would be the
24 best approach. Otherwise it, it just might confuse --

25 MR. EMMONS: Okay.

1 JUDGE GONZALEZ: -- someone.

2 MR. EMMONS: If I may ask my, my colleague, Mr.
3 Weissman, to make a note that we remember to do that. I thank
4 Mr. Weber for that.

5 JUDGE GONZALEZ: All right.

6 MR. EMMONS: With that, Your Honor, I think we've
7 identified everything in Exhibit 2 and at this point TDS/U.S.
8 Cellular would offer it, TDS/USCC Exhibit 2, into evidence.

9 JUDGE GONZALEZ: And who wants to start with the
10 objections?

11 MR. WEBER: I'll go ahead and start --

12 JUDGE GONZALEZ: Mr. Weber? All right.

13 MR. WEBER: -- Your Honor. My first objection is to
14 paragraph 16 on page 8, and I would move to strike that para-
15 graph as irrelevant.

16 MR. EMMONS: Your Honor, if I can respond to that?
17 This, this testimony is the testimony of Mr. Nelson, of
18 course.

19 JUDGE GONZALEZ: Right.

20 MR. EMMONS: Mr. Nelson, as you know, is one of the
21 principals of U.S. Cellular whose testimony in the prior -- or
22 whose statements in the prior proceeding are at issue in this
23 proceeding, and he is mentioned throughout the Hearing
24 Designation Order. The paragraph in question, paragraph 15,
25 among other things goes directly to Mr. Nelson's state of mind

1 about --

2 JUDGE GONZALEZ: I'm sorry, is it 15 or 16?

3 MR. WEBER: 16.

4 MR. EMMONS: I, I misspoke. I meant 16 and that's
5 what I am referring to. It goes to Mr. Nelson's state of mind
6 about how the Management Committee functioned. It does that
7 by explaining the reasons why Mr. Meyers (phonetic sp.), who
8 was the other -- the second of the two U.S. Cellular
9 representatives on the Management Committee, why he was
10 appointed and what his role would be; and, and likewise, what
11 Mr. Nelson viewed his own role on the Management Committee to
12 be in light of his, his experience. And, so, this goes --
13 this is direct evidence of Mr. Nelson's state of mind. It's
14 his testimony that in part explains his views of how the
15 Management Committee operated and why it operated that way.

16 MR. WEBER: Well, while I -- I guess I still have
17 some question as to the direct relevance. I will accept Mr.
18 Emmons' description. At first I was questioning how the
19 reason for appointing Mr. Meyers was in any way relevant, but
20 I, I will accept his description and I will withdraw that
21 objection.

22 JUDGE GONZALEZ: Okay. Next, the next objection?

23 MR. WEBER: I would move to strike the final two
24 sentences of paragraph 17 as both irrelevant and speculative.

25 JUDGE GONZALEZ: Mr. Emmons?

1 MR. EMMONS: This again goes directly to the wit-
2 ness's state of mind because it describes his perspective on,
3 on his activities with respect to LaStar. One of the points
4 that he has always made is that, that LaStar was a very, very
5 small matter in his world compared to all of the other things
6 that he had responsibility for doing. And the two -- the
7 sentences in particular that Mr. Weber has focused on, in
8 particular the last one, go to explain and put into context
9 where LaStar fit into Mr. Nelson's understanding of, of what
10 his responsibilities in all his work were.

11 JUDGE GONZALEZ: But it really doesn't say that,
12 does it?

13 MR. EMMONS: Well, it talks about the amount of
14 correspondence he gets, which does put into -- how busy he is.

15 JUDGE GONZALEZ: Yeah, it says how busy he is, but
16 it doesn't give any order of priority.

17 MR. SCHNEIDER: There is a more particular purpose
18 for this, Your Honor, too, that I might point to, which is
19 that you're going to come across a number of things in this
20 docket and this case with Mr. Nelson's hand notes on it. And
21 this is, this is the explanation to put into context what he
22 does. And what he's saying in this part is with respect to
23 documents that contain my initials and directions, he wants
24 you to understand that although it contains his handwriting
25 notes, he may have looked only briefly at it and that he

1 typically gets 50 to 100 pieces of these types of things on
2 his desk a day, so you understand the context in which he's
3 making these notations. There may be other ways to convey
4 that to you, such as putting each and every one of them before
5 him and having him try and remember back or -- then look at a
6 number of them and tell you how he does this. This was a
7 concise way of explaining to you the practice so that if
8 people make argument based on those types of notations on, on
9 papers you will understand the context in which they occur.

10 JUDGE GONZALEZ: Well, my problem is with the tail
11 end of that first sentence. "I may have only looked briefly
12 at it." What does that mean? What does that say?

13 MR. SCHNEIDER: What it says is that just because
14 something has his handwriting doesn't mean he looked in
15 detail.

16 JUDGE GONZALEZ: But then again he might have.

17 MR. SCHNEIDER: And, and he'll be available to
18 answer --

19 JUDGE GONZALEZ: Well, that's what I mean. As much
20 as I dread the idea of having to, you know, show him every,
21 every document, apart from that I don't know how we can give
22 this any weight at all. I mean, it could very easily have
23 been something that he spent all night looking at. We really
24 have no way of knowing, do we? So, I, I agree with Mr. Weber.
25 I find the -- that sentence ending with "consequently"

1 objectionable and it will be stricken. The second sentence --

2 MR. EMMONS: Do you mean to say the following
3 sentence, Your Honor?

4 JUDGE GONZALEZ: "Consequently, although a
5 particular document from the time-frame may contain my
6 initials and my handwriting, I may have only looked briefly at
7 it."

8 MR. EMMONS: That's where I meant.

9 JUDGE GONZALEZ: I mean, I don't really see any
10 reason to keep any of that sentence.

11 MR. EMMONS: Right. I understood you just ruled
12 that that would not come in --

13 JUDGE GONZALEZ: Right. Right.

14 MR. EMMONS: -- and then you made a reference to the
15 second sentence which --

16 JUDGE GONZALEZ: Yeah. Now, I'm, I'm addressing the
17 second sentence. The second sentence is just a statement of
18 fact as to how many documents he receives a day. He could
19 certainly be cross-examined on that. I don't have any
20 objection with respect to that sentence. Any further
21 objections?

22 MR. WEBER: Yes, Your Honor. I would also move to
23 strike the final sentence in paragraph 18, which begins with
24 the word "moreover" at the bottom of page 9 and continues on
25 to the next page, as irrelevant.

1 MR. EMMONS: Your, Your Honor, I can't think of
2 anything that more directly goes to Mr. Nelson's state of mind
3 and, and his good faith than his perception of and
4 understanding as to whether or not his counsel thought there
5 was anything wrong with, with what U.S. Cellular was doing or
6 with any of the statements that U.S. Cellular made. This --
7 the sentence says that, that he relied on Cotina Naftelan in
8 all FCC matters, and the normal inference, I think, within the
9 realm of human experience is, Your Honor, that if you're
10 relying on someone in a fiduciary relationship and that person
11 does not advise you that your conduct is out of line in any
12 way, you -- that is a reason why you would believe that it
13 wasn't out of line, and that's exactly I think what Mr. Nelson
14 is saying here. So, it is quite relevant that, that Mr.
15 Nelson from his perception was never told that there was
16 anything wrong with what was happening.

17 JUDGE GONZALEZ: Mr. Weber?

18 MR. WEBER: The Bureau did believe this was a close
19 call. We believe that just because counsel may have never
20 advised them what they were doing was wrong, it doesn't neces-
21 sarily prove or isn't probative of whether or not he knowingly
22 made mistakes.

23 JUDGE GONZALEZ: No, but I -- no, I agree with you
24 there. But still, at the same time, there might be some
25 evidence of good faith on his part, the fact that he was --

1 assuming that in fact his testimony on cross-examination holds
2 up, that is some evidence of good faith on his part. So I
3 don't have any objection to that sentence. It will remain
4 part of the exhibit. Any further objections?

5 MR. WEBER: Yes. I would move to strike the final
6 three sentences from paragraph 21 which starts --

7 JUDGE GONZALEZ: I'm sorry? How many sentences?

8 MR. WEBER: Final three, which starts with "Although
9 I thought..." The first full sentence on page 12 to the end
10 of the paragraph. Although, actually, I'll modify that. I'll
11 allow the last sentence. So, just strike the third from the
12 end, the second from the end.

13 JUDGE GONZALEZ: Ending with "LaStar," is that
14 correct?

15 MR. WEBER: Ending with "LaStar," correct.

16 MR. EMMONS: Well, Your Honor, again, Your Honor,
17 this is directly probative of Mr. Nelson's state of mind. In
18 the first sentence that counsel cites, it is relevant that Mr.
19 Nelson understood that United States Cellular had an
20 obligation to pay them, to pay the, to pay the bills. That is
21 relevant because it goes to whether Mr. Nelson believed that
22 there -- that the payment of the bills constituted some
23 impermissible exercise of control on the part of United States
24 Cellular.

25 The second sentence, the following sentence, is

1 likewise relevant. The fact that Mr. Nelson never threatened
2 to withhold the payment or to use the expense payment process
3 to influence the actions of LaStar is probative of his state
4 of mind that, that U.S. Cellular had no reason or should not
5 have done so. It's probative that, that he did not think that
6 it was appropriate for U.S. Cellular to do any of those
7 things.

8 So, both of those sentences go directly to Mr.
9 Nelson's state of mind, which is at issue here.

10 MR. WEBER: Well, the reason the Bureau states that
11 they're irrelevant is because in the Bureau's -- nothing in
12 the Bureau's Bill of Particulars questions whether or not
13 payment of the bills constituted control or whether or not
14 they rightly or wrongly believed that payment of the bill
15 should constitute control.

16 MR. EMMONS: Well, but the Bill of Particulars does,
17 Your Honor, make some very general statements questioning
18 whether it was candid for U.S. Cellular to say that U.S.
19 Cellular was not in control of LaStar. All of the statements
20 in the Bill of Particulars that refer to and quote from the
21 so-called Petition to Delete Footnote --

22 JUDGE GONZALEZ: Well, I don't really -- the first
23 sentence, I don't see the relevance of the first sentence.

24 MR. SCHNEIDER: Well, the only, the only thing I
25 might -- I'm sorry, Your Honor. You --

1 JUDGE GONZALEZ: No. I mean, I -- I don't really
2 see the relevance of the first sentence. The second sentence,
3 it's a very, very close call. It would appear -- I can
4 understand the, the reason why the Bureau has raised an
5 objection to the second sentence, because it seems to, to
6 address itself more -- although I'm not sure that was the
7 nature of the Bureau's objection, but it seems to address more
8 to the actual control, whether or not control exists, and as
9 we've indicated several times that's not in issue here.

10 MR. EMMONS: But, but, Your Honor, also -- yes, I
11 would agree that, that, that would be one way to look at that,
12 but there's another way I think you have to look at it to,
13 which is that the -- that what Mr. Nelson did and didn't do,
14 the things that he did and didn't do, are probative of his
15 state of mind as to the propriety of doing or not doing such
16 things. And in that respect this sentence is, I think,
17 directly relevant to his state of mind.

18 MR. HARDMAN: If, Your -- if, Your Honor -- I may --

19 JUDGE GONZALEZ: Yeah, I -- oh, god, Mr. Hardman,
20 maybe you're going to -- you know.

21 MR. HARDMAN: If, if I'm hearing Mr. Emmons correct-
22 ly, what we're -- we are going to have a lot of arguments in
23 the Findings and Conclusions phase, because this is an example
24 of the statement to which it occurs repeatedly in the
25 Pleadings and other evidence in the LaStar proceeding in which

1 the Commission categorically rejected. It is -- while it may
2 be true what the Commission in substance found in LaStar was:
3 so what -- and to continue to, you know, harp on points like
4 this is just another indication of attempting to reargue that
5 case.

6 MR. SCHNEIDER: Your Honor --

7 MR. EMMONS: It is not.

8 MR. SCHNEIDER: That, that --

9 MR. EMMONS: It is not.

10 MR. SCHNEIDER: That's not true. And the point of
11 putting it in is not to reargue that case. Mr. Hardman's own
12 statement indicates how it's wrong. He says "so what?" Well,
13 "so what" to control? You're right. But not "so what" to, to
14 the intent of the Party, the state of mind of the Party as to
15 where he was when he was testifying before the Commission.
16 There was no finding that U.S. Cellular ever threatened to
17 withhold any payment or seek to use expense payment process to
18 influence the action of LaStar. And, and we're not going to
19 ask for a finding on that with respect to the control issue.
20 But --

21 JUDGE GONZALEZ: Yeah. I wonder what weight it's
22 going to get though, because -- a weight would be assigned to
23 it because apparently they were obligated to pay. So the fact
24 that he never threatened to withhold any payment --

25 MR. SCHNEIDER: It may be true that in all this

1 volume, Your Honor, there are some statements that --

2 JUDGE GONZALEZ: I mean, I --

3 MR. SCHNEIDER: -- in and of themselves don't go
4 very far, don't mean very much --

5 JUDGE GONZALEZ: But in this case we have a specific
6 objection which I have to rule on --

7 MR. SCHNEIDER: Okay.

8 JUDGE GONZALEZ: -- Mr. Schneider, so --

9 MR. SCHNEIDER: But, but you, you might make --

10 JUDGE GONZALEZ: I'm sure there are any number of
11 others, but I don't have to rule on them.

12 MR. SCHNEIDER: But, but we might corroborate a
13 Proposed Finding that Mr. Nelson never, never took any action
14 or never thought he was taking any action that was an
15 aggressive attempt to control LaStar, and so he testified
16 such. With the citing of 10 or 12 or 15 different instances
17 where he felt that was true, and this could be one of them,
18 and while that wouldn't mean very much to us sitting here
19 today arguing over an objection, it would be one small part of
20 a record that we would establish to confirm his state of mind.

21 MR. HARDMAN: Your Honor --

22 MR. WEBER: I would only say that this would be
23 relevant if there was an issue in the Bill of Particulars, was
24 stated that some previous statement by Mr. Nelson about that,
25 that making the payments for LaStar didn't constitute control

1 or anything like that, if Bill of Particulars questioned any
2 such statements, these two sentences would be relevant. I, I
3 know of nothing in the Bill of Particulars which, which
4 discusses this issue, so I don't, I don't see how this is
5 probative --

6 JUDGE GONZALEZ: Yeah, I, I must say, since there is
7 an objection, I can't deny the fact that I, I -- that I don't
8 consider -- or I don't find it to be relevant. So those two
9 sentences will be stricken.

10 MR. EMMONS: Starting with "Although"?

11 JUDGE GONZALEZ: "Although" through to "LaStar."

12 MR. HARDMAN: I'm sorry. You said starting with
13 "Although" --

14 JUDGE GONZALEZ: Right.

15 MR. HARDMAN: -- or "at no time"?

16 JUDGE GONZALEZ: "Although I thought that some of
17 the expenses..."

18 MR. HARDMAN: Okay. Thank you.

19 JUDGE GONZALEZ: And then ending with "LaStar,"
20 which is the end of the second -- of the immediately following
21 sentence.

22 MR. HARDMAN: Okay. Thank you.

23 JUDGE GONZALEZ: Any further objection, sir?

24 MR. WEBER: Yes, Your Honor. I'd also move to
25 strike paragraphs 27 and 28. This discusses conversations Mr.

1 Nelson had with Dr. Andy Anderson, one of the consultants for
2 the LaStar application, and again I, I know of nothing in the
3 Bureau which questions any interrelations between Mr. Nelson
4 and Dr. Anderson.

5 JUDGE GONZALEZ: All right. I'll read through the
6 paragraphs.

7 (Pause to review document.)

8 JUDGE GONZALEZ: Who wants to respond to the
9 objection?

10 MR. EMMONS: Well, I'll respond, Your Honor, and
11 essentially say what Mr. Schneider and I were discussing in an
12 off-the-record conversation, which is that if we're going to
13 see Proposed Findings from any Party on the other side about
14 Mr. Nelson's dealings with Dr. Anderson, then this has to come
15 in as an explanation of that. If we are sure that we are not
16 going to see any Findings from anyone on the other side about
17 Mr. Nelson and his dealings with Dr. Anderson, then I would
18 agree this could be withdrawn. Although, I would exclude from
19 what I just said the last three sentences, I think, of
20 paragraph 28, which are an explanation by Mr. Nelson of why he
21 circulated copies of the correspondence with Dr. Anderson to,
22 to TDS's and U.S. Cellular's counsel but not to SJI. Because
23 that, because that is --

24 JUDGE GONZALEZ: Well, if we keep that, we would
25 have to keep some of the preceding paragraph. It wouldn't --

1 would those last three sentences make any -- I mean, I haven't
2 read through the entire thing, but would those three sentences
3 have any meaning if --

4 MR. WEBER: The word "it" would not make any sense.
5 You'd have -- when it says "because Mr. Belendiuk had already
6 received it" you'd have to somehow modify it to, to tell what
7 the word "it" is referring to.

8 MR. EMMONS: Well, if, if the, if --

9 JUDGE GONZALEZ: This is the only -- this is --
10 these are the only paragraphs where that's discussed, the
11 Anderson study?

12 MR. EMMONS: That's, that's correct. The point that
13 I was referring to, though, in the last three or four
14 sentences of paragraph 28 is a somewhat different point,
15 although it, it's made in the context of the Anderson
16 correspondence.

17 JUDGE GONZALEZ: Right. Well, we would have to
18 amend the sentence.

19 MR. EMMONS: Maybe this is one, Your Honor, that we
20 could, we could work on to re-form and have the witness re-
21 form it when he gets on the stand in a way that, that meets
22 the objection stated by Mr. Weber but preserves the point that
23 I've just been making.

24 JUDGE GONZALEZ: Will anyone be arguing in response
25 to Mr. Emmons' question?

1 MR. WEBER: The Bureau does not intend to. There is
2 nothing in the Bureau's direct case which reflects any inter-
3 actions between Mr. Nelson and Dr. Anderson.

4 JUDGE GONZALEZ: Mr. Hardman?

5 MR. HARDMAN: The same is true --

6 JUDGE GONZALEZ: All right. Well, then I think what
7 we can do is strike the -- that portion of -- those portions
8 of the paragraphs that deal with the Anderson study. I'll
9 leave the last three sentences and they will be amended when
10 we have the witness.

11 MR. SCHNEIDER: Your Honor, I, I don't mean to be
12 picky. I think he said three, but he meant four.

13 JUDGE GONZALEZ: Is it four? Yeah, you're right.
14 It's four. Yeah.

15 MR. WEBER: Starting with "I circulated..."

16 JUDGE GONZALEZ: "In my view that was not my role."
17 That's a very short sentence.

18 MR. EMMONS: It, it's four. I, I counted three
19 periods, but I see four there now.

20 JUDGE GONZALEZ: Yeah. Right. It's four sentences.

21 MR. EMMONS: And we'll do that. We have to, as part
22 of the re-formation process, make some reference to what is
23 now Tab F as well because that's referred to, as you see, in
24 paragraph 28 and is the predicate for the first -- they are
25 the materials that --